(3)

Supreme Court, U.S.
FILED
SEP 8 - 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-220

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1987

CITY OF SANTA BARBARA,
Petitioner,

VS.

WILLIAMS C. HALL and JEAN G. HALL,
Respondents.

On Petition for Writ of Certiorari to The United States Court of Appeals for the Ninth Circuit.

AMICUS CURIAE BRIEF OF THE CITIES OF BERKELEY, CAPITOLA, CARSON, CATHEDRAL CITY, FONTANA, HAYWARD, LOS ALTOS, LOS ANGELES, MOUNTAIN VIEW, OXNARD, PALM SPRINGS, RANCHO MIRAGE, RIALTO, SAN BUENAVENTURA, SAN JOSE, SAN LUIS OBISPO, SANTA MONICA, VACAVILLE, VALLEJO, WEST HOLLYWOOD, WESTLAKE VILLAGE AND THE COUNTY OF SANTA BARBARA IN SUPPORT OF PETITION FOR CERTIORARI

RICHARDS, WATSON & GERSHON
A Professional Corporation
*ROCHELLE BROWNE
MICHAEL JENKINS
333 South Hope Street
Thirty-Eighth Floor
Los Angeles, California 90021
(213) 626-8484

**Counsel of Record*

Bowne of Los Angeles, Inc., Law Printers. (213) 742-6600

22pp

TABLE OF CONTENTS

	Page
INTEREST OF AMICI	2
SUMMARY OF ARGUMENT	4
ARGUMENT	6
I.	
REVIEW IS REQUIRED TO CLARIFY THE STANDARD OF JUDICIAL REVIEW APPLICABLE TO ECONOMIC REGULATION	6
II.	
REVIEW IS REQUIRED TO CLARIFY WHEN RENT CONTROL SHOULD BE JUDGED UNDER THE RULES APPLICABLE TO REGULATORY ACTION AND WHEN IT SHOULD BE REVIEWED UNDER THE RULES APPLICABLE TO A PHYSICAL INVASION	9
III.	
REVIEW IS REQUIRED TO CLARIFY THE APPLICABILITY OF THE RIPENESS DOCTRINE TO RENT REGULATION	12
IV.	
REVIEW IS REQUIRED TO RESOLVE CONFLICTS BETWEEN THE OPINION HEREIN AND THE OPINIONS OF THIS COURT, OTHER CIRCUITS AND STATE SUPREME COURTS	14
CONCLUSION	15

TABLE OF AUTHORITIES CITED

Cases

Page

Berman v. Parker, 348 U.S. 26 (1954) 9

Birkenfeld v. City of Berkeley, 17 Cal.3d 129, 130 Cal.Rptr. 465, 550 P.2d 1001 (1976) 10, 11, 14

Block v. Hirsh, 256 U.S. 135 (1921) 4, 9, 11

Carson Mobilehome Park Owners' Assoc. v. City of Carson, 35 Cal.3d 185, 197 Cal.Rptr. 284, 672 P.2d 1297 (1983) 5, 14

Federal Communications Commission v. Florida Power Corp., 480 U.S. ____, 107 S.Ct. 1107 (1987) 5, 10, 14

Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 571 (1944) 4, 9

Federal Power Commission v. Natural Gas Pipeline Co., 531 U.S. 575 (1942) 9, 10

Fisher v. City of Berkeley, 37 Cal.3d 644, 209 Cal.Rptr. 682 (1984) 4, 5, 9, 11, 14

Fresh Pond v. Troy Ltd., 727 F.2d at 301.....10, 14

Fresh Pond Shopping Center, Inc. v. Callahan, 446 U.S. 875 (1983) 5

Grace v. Town of Brookline, 399 N.E. 2d 1038 (Mass. 1974).....5, 11, 14

Hall v. City of Santa Barbara, 813 F.2d 198 (9th Cir. 1987)..... 3, 5, 6, 7, 8, 12

Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984).....6, 7, 8, 9

Hutton Park Gardens v. Town Council, 68 N.J. 543, 350 A.2d 1 (1975) 5, 10, 14

Lochner v. New York, 198 U.S. 45 (1905) 6

TABLE OF AUTHORITIES CITED

CASES

	Page
Loretto v. Telecompter Manhattan CATV Corp., 458 U.S. 419 (1982)	4
MacDonald, Somer & Frates v. Yolo County, U.S. ——, 106 S.Ct. 2561 (1986)	6, 13
Nebbia v. New York, 291 U.S. 502 (1934)	4, 6
Palos Verdes Shores Mobile Estates v. City of Los Angeles, 142 Cal.App.3d 362, 190 Cal.Rptr. 866	11
Permian Basin Area Rate Cases, 390 U.S. 747 (1968)	4, 9
Ross v. City of Berkeley, 655 F.Supp. 820 (N.D. Cal. 1987)	4
Troy, Ltd. v. Renna, 727 F.2d 287 (3rd Cir. 1984)	5, 11
Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483 (1955)	4, 6, 7
Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 172 (1985)	6, 13

Statutes

California Civil Code, Section 798	2, 11
Santa Barbara Ordinance, Section 26.08.040(c)(3)	12

Textbooks

Baar, Guidelines for Drafting Rent Control: Lessons of a Decade, 35 Rutg. L.R., 723, 725, n.1. (1983)	2
California Planners 1987 Book of Lists, California Office of Planning and Research	2
K. Rosen, California Housing Markets in the 1980s: Demand, Affordability and Politics, 48, 57 (1984)	2

No. 87-220

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1987

CITY OF SANTA BARBARA,

Petitioner,

VS.

WILLIAMS C. HALL and JEAN G. HALL,

Respondents.

On Petition for Writ of Certiorari to The United States Court of Appeals for the Ninth Circuit.

AMICUS CURIAE BRIEF OF THE CITIES OF BERKELEY, CAPITOLA, CARSON, CATHEDRAL CITY, FONTANA, HAYWARD, LOS ALTOS, LOS ANGELES, MOUNTAIN VIEW, OXNARD, PALM SPRINGS, RANCHO MIRAGE, RIALTO, SAN BUENAVENTURA, SAN JOSE, SAN LUIS OBISPO, SANTA MONICA, VACAVILLE, VALLEJO, WEST HOLLYWOOD, WESTLAKE VILLAGE AND THE COUNTY OF SANTA BARBARA IN SUPPORT OF PETITION FOR CERTIORARI

The Cities of Berkeley, Capitola, Carson, Cathedral City, Fontana, Hayward, Los Altos, Los Angeles, Mountain View, Oxnard, Palm Springs, Rancho Mirage, Rialto, San Buenaventura, San Jose, San Luis Obispo, Santa

Monica, Vacaville, Vallejo, West Hollywood and Westlake Village and the County of Santa Barbara respectfully submit this Amicus Curiae brief pursuant to Rule 36.4 in support of the Petition for Certiorari filed by the City of Santa Barbara.

INTEREST OF AMICI

Amici are 21 California cities and one California county. They vary in size from the largest to one of the smallest cities in California. They are located throughout the State and differ widely in socioeconomic characteristics. All Amici have enacted some form of rent stabilization in response to severe shortages of rental housing.[1]

The California vacancy rate is about 2%, less than one-third the national average.[2] Thirteen local California jurisdictions have adopted controls which apply to apartment units, fifty-one regulate space rents in mobilehome parks and three regulate commercial rents.[3] California has recognized the particular vulnerability of mobilehome owners who rent space in mobilehome parks by adopting the Mobilehome Residency Law, California Civil Code Section 798, *et seq.*, which provides eviction protections and the right to sell a mobilehome in place to the tenants of each of the 380,000 mobilehome spaces in the State.

---

[1]Ten to twelve percent of the nation's housing stock is subject to rent regulation. Baar, Guidelines for Drafting Rent Control: Lessons of a Decade, 35 Rutg. L. Rev., 723, 725, n.1 (1983).

[2]K. Rosen, California Housing Markets in the 1980s: Demand, Affordability and Politics, 48, 57 (1984).

[3]California Planners 1987 Book of Lists, California Office of Planning and Research.

Some of Amici have ordinances which, like the Santa Barbara ordinance herein, regulate only rental rates for spaces in mobilehome parks, while others have ordinances which regulate rental rates only in apartment units or in both mobilehome parks and apartment units. The provisions of these ordinances vary greatly, and they do not all contain a provision like that at issue in this case. However, all Amici are concerned by the serious threat to local control and economic regulation which has been created by the Ninth Circuit opinion herein (the "opinion").[4]

Although the decision focuses on the regulation of space rents in mobilehome parks, its reasoning threatens all economic regulation by indicating that the courts should sit as super-legislatures, second-guessing the social and political judgments of elected legislative bodies and by somehow transmuting mere rate regulation into a physical invasion of property and thus a compensable taking. It thus threatens the ability of local jurisdictions to enact economic regulations tailored to local circumstances as well as years of well-settled law concerning the deference which the courts should give to social and economic regulation.

Moreover, the opinion has already spawned confusion and a raft of litigation. In addition to the instances cited in Santa Barbara's Petition, cases based on the opinion have also been filed against the County of Santa Cruz and the City of Santa Monica.[5] Further, the Northern District

---

[4]*Hall v. City of Santa Barbara*, 813 F.2d 198 (9th Cir. 1987), Appendix ("App.") C, D & E to the Petition herein.

[5]De Anza Properties v. County of Santa Cruz, District Court Case No. C 87-200041-SW; Hager v. City of Santa Monica, Los Angeles Superior Court Case No. WEC 103984; Treffinger v. City of Santa Monica, Los Angeles Superior Court Case No. WEC 116187.

of California has recently relied on the opinion in reviewing the City of Berkeley's Commercial Rent Control Ordinance. *Ross v. City of Berkeley,* 655 F.Supp. 820, 841 (N.D.Cal. 1987) modified in other respects, 6/11/87, No. C-85-7321. Although *Ross* relied on the opinion to indicate that the challenged provision of the Berkeley ordinance was invalid, it dismissed the case on the ground that it was not ripe. Thus, there is considerable uncertainty as to how to apply the opinion herein and how to reconcile it with the conflicting decisions of this Court, other circuits and state courts. Review and guidance by this Court is, therefore, sorely needed.

SUMMARY OF ARGUMENT

A rent stabilization ordinance is simply a species of economic regulation. Such regulations have long been judged proper so long as they have a debatable rational basis and permit those subject to regulation to earn a just and reasonable return. *Nebbia v. New York,* 291 U.S. 502 (1934); *Williamson v. Lee Optical of Oklahoma, Inc.,* 348 U.S. 483 (1955); *Federal Power Commission v. Hope Natural Gas Co.,* 320 U.S. 571 (1944); *Block v. Hirsh,* 256 U.S. 135 (1921); *Permian Basin Area Rate Cases,* 390 U.S. 747, 769-770 (1968); *Fisher v. City of Berkeley,* 37 Cal.3d 644, 209 Cal.Rptr. 682 (1984), portion of appeal *re* constitutionality of rent control ordinance dismissed, 471 U.S. 1124 (1985), aff'd. on other grounds, 475 U.S. 260 (1986).

The opinion ignores these precedents by concluding that Santa Barbara's regulation of rental rates and the regulation of evictions necessarily incident to such regulation constitute a physical invasion of property like that invalidated in *Loretto v. Telecompter Manhattan CATV Corp.,* 458 U.S. 419 (1982). However, that conclusion conflicts with this Court's recent rejection of a very

similar attempt to extend *Loretto* to landlord/tenant regulation in *Federal Communications Commission v. Florida Power Corp.*, 480 U.S. ____, 107 S.Ct. 1107 (1987).

The opinion further conflicts with the decisions in *Fresh Pond Shopping Center, Inc. v. Callahan*, 464 U.S. 875 (1983) (appeal dismissed), *Fisher*, and the Third Circuit decision in *Troy, Ltd. v. Renna*, 727 F.2d 287 (3rd Cir. 1984), which upheld restrictions more extensive than the eviction regulations in the Santa Barbara ordinance. It also conflicts with the California Supreme Court decision in *Carson Mobilehome Park Owners' Assoc. v. City of Carson*, 35 Cal.3d 185, 197 Cal.Rptr. 284, 672 P.2d 1297 (1983), which upheld a mobilehome park space rent regulation similar to, but more stringent than Santa Barbara's, with the New Jersey Supreme Court decision in *Hutton Park Gardens v. Town Council*, 68 N.J. 543, 350 A.2d 1 (1975), and the Massachusetts Supreme Court decision in *Grace v. Town of Brookline*, 399 N.E.2d 1038 (Mass. 1974).

As those judges dissenting from the Ninth Circuit's denial of a rehearing en banc in this case stated:

> "This case is important. Although it is not a decision on the merits invalidating any ordinance, it is an authorization for broad, wholesale attacks upon rent control regulation. It casts a shadow upon all economic regulation. Our court must now sit idly by and watch taxpayers' money and court time being expended in litigation over the effects of this decision. I regret that we did not take this case en banc and put our circuit back in line with the Supreme Court and the rest of the country."

(Opinion, 813 F.2d at 211, App. E-6 and 7.)

Finally, the decision conflicts with the repeated and recent holdings of this Court that a taking claim is not ripe until after there has been a final decision as to how the challenged regulation affects the plaintiff. *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 190-192 (1985); *MacDonald, Somer & Frates v. Yolo County*, 477 U.S. ____, 106 S.Ct. 2561, 2567-2569 (1986). The plaintiffs allege that artificially low rents resulting from the Santa Barbara ordinance enable the mobilehome owners residing in their park to sell their homes at a premium. The opinion held this allegation to be crucial in distinguishing this case from the rent control regulations previously upheld by this Court, other circuits and state courts. (opinion, 813 F.2d at 205, App. C-14.) Yet had the plaintiffs sought a rent increase under the administrative procedure provided by the Santa Barbara ordinance, their rents might well be higher and the alledged premium in sales price, if any, might well disappear. Thus, it is impossible to determine just what the final impact of the Santa Barbara ordinance on plaintiffs' property will be.

ARGUMENT

I.

REVIEW IS REQUIRED TO CLARIFY THE STANDARD OF JUDICIAL REVIEW APPLICABLE TO ECONOMIC REGULATION.

Although there was a period early in this century when the courts engaged in reviewing the wisdom of socioeconomic regulation (*Lochner v. New York*, 198 U.S. 45 (1905)), that practice has been repeatedly and unequivocally rejected. *Nebbia v. New York*, 291 U.S. 502 (1934); *Williamson v. Lee Optical*; *Hawaii Housing Authority v.*

Midkiff, 467 U.S. 229 (1984). As explained by this Court in *Williamson v. Lee Optical*:

> "But the law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it.
>
> "The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought."

348 U.S. at 487-488 (citations omitted).

This principle was affirmed in *Midkiff*, as follows:

> "[O]ur cases make clear that empirical debates over the wisdom of takings — no less than debates over the wisdom of other kinds of socioeconomic legislation — are not to be carried out in the federal courts."

467 U.S. at 243.

Although the opinion herein cites *Midkiff*, it appears to have followed a different rule. Thus, it first quotes *Midkiff* for the well settled rule that the public use requirement of the Fifth Amendment takings clause is "coterminous with the scope of a sovereign's police powers." (opinion, 813 F.2d at 206-207, App. C-17.) It also cites *Midkiff* for the equally well settled rule that "[t]he test appears to be whether the legislature chose an objective that is within its authority under the police power, and whether it 'rationally could have believed that the [Act] would

promote its objectives.' " (opinion, 813 F.2d at 207, App. C-18.)

However, the opinion then relies on *Midkiff* for the novel proposition that: "[L]ess deference would be afforded where government does not intend to effect a taking than where it does." (opinion, 813 F.2d at 207, App. C-17 & 18.) This suggests the anomalous result that a local government may be reviewed more strictly when it makes a good faith mistake than when it sets out to effect a taking.

The opinion further questions the wisdom of Santa Barbara's ordinance and directs the trial court to review its wisdom:

> "If appellants' allegations are substantiated, there would be significant doubt whether these purposes are achieved, or could rationally be thought achievable, by means of the ordinance.
>
> "... We express no view on this score; we merely hold that the issue must be considered and addressed by the district court on the basis of a complete record.[26]"

(Opinion, 813 F.2d at 207-208, App. C-19.)

In footnote 26, the opinion questions the wisdom of rent control, noting: "[w]hat appears to be a growing consensus that 'rent control causes a reduction in the quality of the existing rental housing stock and discourages investment in new rental property' actually exacerbating the problems it is intended to ameliorate."

While this quote states one political or socioeconomic viewpoint, it is clearly not the only valid viewpoint and the fact that rational minds may differ is not a basis for

invalidating legislation.[6] The opinion's directive to review the wisdom of ordinances nonetheless governs all the district courts in the Ninth Circuit, and may well influence other circuits, unless modified by this Court. Aside from the fact that it represents a significant departure from years of well settled law, it is impossible to know how to reconcile it with the equally binding directives in the above-cited cases.

II.

REVIEW IS REQUIRED TO CLARIFY WHEN RENT CONTROL SHOULD BE JUDGED UNDER THE RULES APPLICABLE TO REGULATORY ACTION AND WHEN IT SHOULD BE REVIEWED UNDER THE RULES APPLICABLE TO A PHYSICAL INVASION.

Rent control ordinances, like other socioeconomic regulation, have generally been reviewed under the rational basis test discussed above. *Block v. Hirsh,* 256 U.S. at 156-158; *Federal Power Commission v. Hope National Gas Co.,* 320 U.S. at 602; *Fisher v. City of Berkeley,* 37 Cal.3d at 691; *Permian Basin Area Rate Cases,* 390 U.S. at 769-770; *Federal Power Comm. v. Natural Gas Pipeline Co.,* 531

---

[6]It is obvious from the above-quoted statistics and rent control cases that many legislatures and courts hold a different view. The opinion focuses on the alleged windfall to selling mobile-home owners and ignores the stated purposes of providing protection against rent gouging in a market where there is a severe shortage of spaces and the mobilehome owners who are park tenants could not find a place to move their homes to even if they could afford the significant cost of doing so. However, the existence of a windfall to private parties has never been a sufficient basis for finding a taking or invalidating public purpose. *Midkiff,* 467 U.S. at 240; *Berman v. Parker,* 348 U.S. 26, 32-34 (1954).

U.S. 575, 585-586 (1942); *Fresh Pond v. Troy Ltd,* 727 F.2d at 301-302; *Birkenfeld v. City of Berkeley,* 17 Cal.3d 129, 165, 130 Cal.Rptr. 465, 550 P.2d 1001 (1976); *Hutton Park Gardens,* 350 A.2d at 15. Under this test a rent control ordinance must be found constitutional so long as it has a debatable rational basis and permits those regulated to earn a just and reasonable return.

There is not even an allegation by plaintiffs, nor could there be since they have never applied for a rent increase, that the Santa Barbara ordinance does not permit a just and reasonable return. Although the opinion indicates there is doubt as to the wisdom of rent control in general and of Santa Barbara's ordinance in particular, that is not a sufficient basis for invalidation under the rational basis test.

The opinion nonetheless finds a possible taking by concluding that the allegations state a claim for a physical invasion taking under *Loretto.* Yet it is clear from the face of Santa Barbara's ordinance (App. A) that it regulates the relationship between landlord and tenant only after a landlord has of his own free choice invited tenants onto his property. Nothing in the ordinance compels the property owner to rent his property. As this Court recently explained in *Florida Power Corp.,* such an invitation by the property owner precludes the application of the *Loretto* physical occupation rule:

> "Respondents contend, in essence, that it is a taking under *Loretto* for a tenant invited to lease at a rent of $7.15 to remain at the regulated rent of $1.79. But it is the invitation, not the rent, that makes the difference. The line which separates these cases from *Loretto* is the unambiguous distinction between a commercial lessee and an interloper with a government license."

Id., 458 U.S. at ____; 107 S.Ct. 1107 at 1112.

Thus, review is required to reconcile the conflict between this Court's opinion in *Florida Power Corp.* and the opinion herein. Moreover, the opinion appears to rely on a combination of the eviction restrictions in the Santa Barbara ordinance and the California Mobilhome Residency Law, California Civil Code Section 798, *et seq.*, which permits mobilehome owners to sell their mobilehomes in place in a park, subject to the park owner's reasonable approval. Yet restrictions on evictions have repeatedly been upheld (*Block v. Hirsch*, 256 U.S. at 157, *Fisher*, 37 Cal.3d at 691, *Troy, Ltd.*, 727 F.2d at 300, *Grace v. Town of Brookline*, 399 N.E.2d at 1045-46, *Birkenfeld*, 17 Cal.3d at 148) and the right to sell a mobilehome in place is no more intrusive than the restrictions upheld in *Fresh Pond* and *Troy Ltd.*

The opinion's reliance on the provisions of the California Mobilehome Residency Law further raises the question whether such state regulation can properly result in the invalidation of otherwise valid rent control, particularly where the California courts have held that this state regulation was *not* intended to preempt rent control. *Palos Verdes Shores Mobile Estates v. City of Los Angeles*, 142 Cal.App.3d 362, 373-374, 190 Cal.Rptr. 866, petition for hearing denied by Cal.Sup.Ct. (1983). The opinion also raises the question whether it is not actually the state law provision guaranteeing the right to sell a mobilehome in place rather than Santa Barbara's ordinance which creates the alleged interference with an owner's right to exclude which troubled the Ninth Circuit. Review and guidance by this Court is required to resolve all these questions.

III.

REVIEW IS REQUIRED TO CLARIFY THE APPLICABILITY OF THE RIPENESS DOCTRINE TO RENT REGULATION.

The opinion places considerable importance on the allegation that mobilehome owners sell their mobilehomes at a premium, noting that this is a significant difference from the effect of previously upheld rent control ordinances:

> "In none of the cited cases has the landlord claimed that the tenant's right to possess the property at reduced rental rates was transferable to others, that it had a market value, that it was in fact traded on the open market and that tenants were reaping a monetary windfall by selling this right to others.
>
> "This is not a minor difference; it is crucial."

(Opinion, 813 F.2d at 205-206, App. C-14.)

The basis for the allegation that tenants are able to sell the right to possess property at a reduced rental rate is the further allegation that their mobilehomes sell for more than they would absent the Santa Barbara ordinance. If the plaintiffs had sought a rent increase above the automatic 10% increase provided when a tenant sells a mobilehome and moves out (Santa Barbara ordinance § 26.08.040(c)(3)), the alleged premium, if any, might disappear. Thus, it is impossible to determine the impact of the ordinance on the plaintiffs until they have sought and obtained or been denied a rent increase.

This Court has repeatedly held that a taking claim cannot be ripe under these circumstances. *MacDonald, Somer & Frates,* 106 S.Ct. at 2567-2569; *Williamson County Regional Planning Commission:*

> "Although [t]he question of what constitutes a 'taking' for the purposes of the Fifth Amendment has proved to be a problem of considerable difficulty, this Court consistently has indicated that among the factors of particular significance in the inquiry are the economic impact of the challenged action and the extent to which it interferes with reasonable investment-backed expectations. *Those factors simply cannot be evaluated until the administrative agency has arrived at a final, definitive position* regarding how it will apply the regulations at issue to the particular land in question."

437 U.S. at 190-191 (emphasis added, citations omitted).

The opinion's rejection of Santa Barbara's claim that the complaint is not ripe therefore requires review to clarify the proper application of the ripeness doctrine to rent control cases.[7]

---

[7]A ripeness issue involving rent control in a somewhat different context is raised in Pennel v. City of San Jose, Case No. 86-753, now pending before the Court. Although the final opinion in Pennel can be expected to shed some light on the ripeness issue, it may not clarify the issues raised by the opinion herein. In any case, it is essential that the opinion herein be reviewed to prevent any conflict with this Court's ultimate decision in Pennel.

IV.

REVIEW IS REQUIRED TO RESOLVE CONFLICTS BETWEEN THE OPINION HEREIN AND THE OPINIONS OF THIS COURT, OTHER CIRCUITS AND STATE SUPREME COURTS.

As set forth above, the opinion herein conflicts with this Court's opinions in *Florida Power Corp., Fresh Pond* and *Fisher,* the Third Circuit's opinion in *Troy, Ltd.,* the California Supreme Court's opinions in *Carson Mobilehome Park Owners Association, Fisher* and *Birkenfeld,* the Massachusetts Supreme Court's opinion in *Grace v. City of Brookline,* and the New Jersey Supreme Court's opinion in *Hutton Park Gardens.* Review is needed to resolve these conflicts.

CONCLUSION

Amici urge that the Petition be granted for all the foregoing reasons.

Dated: August 31, 1987

Respectfully submitted,

RICHARDS, WATSON & GERSHON
A Professional Corporation
ROCHELLE BROWNE
MICHAEL JENKINS

By: ROCHELLE BROWNE
Attorneys for the Cities of Berkeley, Capitola, Carson, Cathedral City, Fontana, Hayward, Los Altos, Los Angeles, Mountain View, Oxnard, Palm Springs, Rancho Mirage, Rialto, San Buenaventura, San Jose, San Luis Obispo, Santa Monica, Vacaville, Vallejo, West Hollywood and Westlake Village and the County of Santa Barbara

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On September 3, 1987, I served the within Amicus Curiae Brief in re: "City of Santa Barbara vs. Williams C. Hall and Jean G. Hall" in the United States Supreme Court, October Term 1987, No. 87-220;

On the Parties in said action, by placing three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

Steven A. Amerikaner
City Attorney
P.O. Drawer P-P
Santa Barbara, California 93102

Sherman Stacey
1299 Ocean Avenue, Suite 313
Santa Monica, California 90401

All Parties required to be served have been served.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on September 3, 1987, at Los Angeles, California

Ce Ce Medina

CE CE MEDINA